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SUPREME COURT OF THE UNITED STATES

October Term 1935

No.

RADIO CORPORATION OF AMERICA
Petitioner-Defendant

v.

RAYTHEON MANUFACTURING COMPANY
Respondent-Plaintiff

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI

The petition should be denied for several reasons each alone sufficient, namely:—

1. The petition, if ever, should not be granted at this stage of the case.

2. The questions which the petitioner tenders to this Court are not involved in the decision of the Circuit Court of Appeals.

3. The plaintiff is entitled to trial by jury on the fact, which it claims, that this release is not under seal.

4. The enforcement of a release under seal may be denied in a court of law on such facts as are claimed by the plaintiff.

5. No question of general importance is answered wrongly by the Court of Appeals.

1. The Petition, if ever, should not be granted at this stage of the case.

Without doubting the jurisdiction of the Supreme Court or the jurisdiction of the Circuit Court of Appeals, (*Enelow* v. *New York Life Insurance Co.*, 293 U. S. 379, January 7, 1935), the Supreme Court should not exercise its jurisdiction at this stage. The refusal of the lower court to hear the issue of fact without a jury differs from the converse refusal of a jury trial. Such a refusal, in an imaginable case, may violate the Constitution. Granting a trial by jury does not. The Court below, even if it ordered the issue tried in equity, might with right direct an issue to the jury. As it is now, the defendant will admit that it may be so right on the issue, that a jury will decide it in the defendant's favor, so that the moot question of the legal art now tendered to this Court need never be decided. So, in the multitude of worthy petitions, which the imperative demands upon this Court compel it to reject, this is not one to be singled out for favor. No harm is done the defendant, *ipso facto*, by a jury in place of a judge. No harm is done the public interests. The petition is well within the areas marked out by the predictions of this Court, for refusal (*Hamilton-Brown Shoe Co.* v. *Wolf Brothers & Co.*, 240 U. S. 251, 258; *American Construction Company* v. *Jacksonville, Tampa and Key West Railway Company*, 148 U. S. 372, 382, 383).

The essential prematurity of this petition is emphasized by the contested statements in the petition and in the supporting brief as to the questions which will arise hereafter in the trial of the case and on which the petitioner desires the preventive advisory opinion of this Court. Many of the contentions imputed to the plaintiff, are not made and will not be made by the plaintiff.

2. The questions which the Petitioner tenders to this Court are not involved in the decision of the Circuit Court of Appeals.

The plaintiff has not asked relief in equity from a release valid at law. On the contrary, the plaintiff has disclaimed any such relief (R. 37 last line to 38 line 14; Opinion R. 71 line 4, line 18). The petition and supporting brief make no mention of this.

The plaintiff says (not that a monopolizing corporation is an outlaw for which a court will not enforce a contract —but—) that "it is contrary to public policy for a court of *law* of the United States to assist a wrongdoer to carry out his plot to restrain commerce and obtain a monopoly by enforcing for the wrongdoer a release obtained by the duress upon the releasor of the illegal monopoly which the release has created; it is not that the releasor seeks the assistance of a court to cancel the release; it is that the release is initially void" (Plaintiff's Brief in C.C.A. p. 6; Opinion R. 80 line 28, 81 lines 8 and 24, 82 line 2; Declaration par. 35-40, R. 21, 22). The plaintiff alleged at law that the purported release was void at law (not voidable in equity).

If contrary to the plaintiff's contentions, the release is enforcible at law, the defendant needs no assistance from equity. The plaintiff asks none.

The sufficingly decisive parts of the opinion of the Circuit Court of Appeals are that "no equitable relief is sought" (R. 75 line 34); "Neither does it follow that an order transferring the case from law to equity against the protest of the plaintiff can be sustained when no affirmative equitable relief is sought" (R. 78 line 20).

The only jurisdiction of the Circuit Court of Appeals, was based on the fact that the order of transfer was essentially the grant by a court of equity of an inter-

locutory injunction in equity to the defendant against the plaintiff to prevent the plaintiff from attacking the release (R. 75 line 1; *Enelow* v. *New York Life Insurance Co.*, 293 U. S. 379, 383). There was no equitable jurisdiction because the defendant had a plain adequate and complete remedy at law in that by the premise of its whole argument, the plaintiff is not permitted to attack the release, at law. If the defendant is right, either the attacking evidence will be excluded or the jury will be instructed that notwithstanding the evidence the release is to be enforced, or both.

3. The Plaintiff is entitled to trial by jury on the fact, which it claims, that this release is not under seal.

The plaintiff did not allege that the release was under seal (Declaration par. 36, 37; R. 21, 22). The answer alleged that it was under seal (R. 29) and that it was an integral part of the license granted to the Raytheon Manufacturing Company (R. 33 lines 2 and 23; R. 34 line 22) of Delaware. In Massachusetts practice, applied under the Conformity Act, the defendant's allegation of a seal is deemed denied without the need of a replication (Massachusetts General Laws (Ter. Ed. 1932) Ch. 231 sec. 34).

The plaintiff, the Massachusetts corporation, has never given a release under seal. The only release under seal and the only release which was "an integral part of the license" was one given by the Delaware corporation (R. 43, 51, 54). The plaintiff signed another agreement which contained words of release (R. 55), not under seal and not purporting to be under seal and professing no intention to become a sealed instrument (R. 54, 56). This second paper has on it the corporate seal of the General Electric Company. It has no other seal (R. 77 line 28). It has no words of adoption. It does not appear that the seal of the General Electric Company was on it when the name of the Massachusetts corporation, Raytheon Incorporated, was affixed. It does not appear that the purported signature "D. T. Schultz, Asst. Treas." (R. 56) was affixed by anyone with authority to execute a sealed instrument.

The record contains no finding that the plaintiff has executed a release under seal. Each of the two documents, one under corporate seal, signed by the Delaware corporation (R. 43-54) and one not under seal, bearing

the names of both the Delaware corporation and the Massachusetts corporation (R. 56) contains words of release (R. 51, 55).

The plaintiff has persisted always in the denial that the Massachusetts corporation executed any release under seal.

The order of the District Court to transfer to equity (R. 31 line 35) is silent as to whether the court deemed that (1) the sealed instrument which was an integral part of the license was effective because the Delaware corporation was the beneficial owner of the claim and so could release it, or (2) the unsealed agreement of both corporations became their sealed instrument because theretofore or thereafter the General Electric Company affixed its corporate seal, or (3) the validity of the release should be tried in equity whether or not under seal. It does appear that the court decided on the pleadings and without evidence (R. 42 line 22).

Later, the District Court in equity made findings of fact (R. 40, 41) but none as to which paper was the one on which the decree was based or whether it was under seal. No evidence was introduced (R. 72 line 13).

The Court of Appeals says: "Whether the adoption of a seal affixed by another person is a question to be determined by extraneous evidence when there is nothing in the final wording of the instrument indicating that the parties 'have hereunto set their hand and seal' raises a rather delicate question but one which we do not find it necessary to determine" (R. 77 lines 35 to R. 78 line 5). The Court for the purposes of decision assumes that without evidence the judge of the district court treated the release as under seal and that plaintiff's counsel raised no question to the contrary. It is respectfully submitted that the record does not warrant this assump-

tion. It became unimportant in view of the right decision of the Court of Appeals that no relief in equity was sought (R. 75, 78).

If the release on which the defendant relied was that which was an integral part of the license given by the defendant to the Delaware corporation, this purported to be under seal. This was the only paper which purported to be sealed by the Raytheon Manufacturing Company of Delaware or of Massachusetts. This was the only release described by the only answer (R. 29) which had been filed when the case was transferred to equity. This was the only paper which contained more than one seal. The answer said nothing about any seal by adoption (R. 29). When the motion for transfer was filed it charged that the plaintiff had adopted the "seals" of the other parties who signed the release (R. 30 line 16). This could mean only the paper that had "seals" on it. The only such paper was the license (R. 53, 54, 56). The amended answer filed six weeks after the transfer to equity (R. 32) alleged that the release on which the defendant relied was the one which "constituted an integral part of the license granted by the defendant to the Raytheon Manufacturing Company" (R. 33 line 2). This paper bore seals. To all appearances, the defendant was taking the position that the virtual plaintiff, the Delaware corporation, the owner of the cause of action and for whose benefit the Massachusetts corporation as plaintiff of record brings this action had released under seal by the only release which was an integral part of the license.

It appeared in the Court of Appeals that what the defendant relies on was not the release with seals and which is an integral part of the license but the agreement not sealed by the plaintiff (R. 77 line 29).

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If a seal is important, nothing has occurred to deprive the plaintiff of the right to trial by jury as to the fact whether the plaintiff (1) adopted the corporate seal of the General Electric Company, (2) ever knew that such a seal had been or was to be put on the paper, (3) ever authorized its name to be affixed to a sealed instrument by an assistant treasurer (R. 56), (4) ever understood or had any reason to understand that the paper was a sealed instrument. No evidence has been heard on these questions even by a judge without a jury. They are all questions of fact and not of law.

The defendant made the affirmative allegation of a seal. The plaintiff denied it. Before the plaintiff may be deprived of a jury trial of the issue of initial voidness and unenforcibility, if that deprivation is to be based on the fact that the paper purporting to be signed by the plaintiff (R. 56) is the plaintiff's sealed instrument, the plaintiff is entitled to a trial by jury on the issue of seal or no.

4. The enforcement of a release under seal may be denied in a court of law on such facts as are claimed by the Plaintiff.

The conflict of authority in the Circuits which the petitioner describes is a thing of the past. This Court on December 11, 1922, removed it by its opinion in *American Mills Company* v. *American Surety Company of New York*, 260 U. S. 360, 363. The decision in *Enelow* v. *New York Life Insurance Co.* (January 7, 1935), 293 U. S. 379, 388, reaffirms this position. Theretofore some courts had held that an instrument under seal could not be defeated at law for duress or fraud inducing its execution. Even these courts had not gone so far as to say that a court of law must enforce an instrument under seal where it would offend public policy by lending the court's assistance to the furtherance of a plot to monopolize. A court of law is not obliged to become an accessory to a crime.

In the case at bar, the plaintiff alleges that the release is itself a part of the plot and that its enforcement will assist in the very monopolizing of all tributeless tube selling which the defendant set out to bring about. If the plaintiff can prove these allegations, a court of law will not assist the defendant to enforce the release (*Continental Wall Paper Company* v. *Louis Voight and Sons Company*, 212 U. S. 227).

The question proposed by the petitioner (Petitioner's Brief pp. 21, 22) whether a claim for damages caused by monopoly or restraint may be satisfied and effectively released is not presented by the pleadings and may never arise in the case. No such question was decided or even discussed by the Court of Appeals (R. 80-82).

For these reasons, the simple question whether a release under seal, obtained by duress can be attacked in equity only, is not presented in the case at bar. If it were, the

result would be the same. Those earlier decisions holding that duress or fraudulent inducements are not a defense at law make no distinction between releases and other instruments under seal. It is established now by the opinion in *American Mills Company* v. *American Surety Company of New York*, 260 U. S. 360, 363, and confirmed by the decision in *Enelow* v. *New York Life Insurance Co.*, 293 U. S. 379, 383, that an instrument under seal may be attacked at law for duress or for fraudulent inducements to its execution, if they are of such a nature that the instrument had no validity from the outset and that no return of consideration or other act on the part of the ostensible releasor is a condition precedent to avoidance.

In the American Mills Company case, the Court by Mr. Chief Justice Taft, speaking of a bond under seal (same case 273 Fed. 67), said: "It is conceded by the respondent that its bill in equity in the District Court should have been dismissed because it had an adequate remedy at law. The case of *Insurance Co.* v. *Bailey*, 13 Wall. 616, 622, and *Cable* v. *United States Life Insurance Co.*, 191 U. S. 288, 306, 307, settle that." It was this Chief Justice who as Circuit Judge in 1898 in *Wagner* v. *National Life Ins. Co.* (C. C. A. 6th) 90 Fed. 395, 404, had written the opinion of the court that: "Our conclusion is, therefore, that it is proper in a suit at law for the plaintiff to meet a plea of release by a replication that the release was obtained by fraud, whether the fraud is in the execution, or in misrepresentation as to material facts inducing execution. We are glad to come to this conclusion, because it avoids circuity of action, and thus facilitates the administration of justice." In this opinion no distinction is made between a release not under seal and a release under seal.

Enelow v. *New York Life Insurance Co.*, 293 U. S. 379, 383, shows that no distinction is to be made, in this respect, between a contract not under seal and a contract under seal. In either case, the attack is at law and not in equity.

The test is whether the attack upon the release is on grounds which put it unconditionally out of legal existence.

Buzard v. *Houston*, 119 U. S. 357, 352, dictum.

If so the plaintiff cannot maintain a bill in equity to set the specialty aside because there is no jurisdiction in equity, as the remedy at law to hold the release no bar, is plain, adequate and complete.

Enelow v. *New York Life Insurance Co.*, (1935) 293 U. S. 379, 383.

American Mills Company v. *American Surety Company of New York*, (1922) 260 U. S. 360, 363, Dictum.

Cable v. *United States Life Insurance Co.*, (1903) 191 U. S. 288.

Insurance Company v. *Bailey*, 13 Wall. 616.

Buzard v. *Houston*, 119 U. S. 347, 352, Dictum.

Whitehead v. *Shattuck*, 138 U. S. 146, 151, Semble.

This year, in *Enelow* v. *New York Life Insurance Co.*, 293 U. S. 379, 385, the Court by Mr. Chief Justice Hughes said: "In such a case, the defense of fraud is completely available in the action at law and a bill in equity would not lie to stay proceedings in that action in order to have the defense heard and determined in equity . . . The decree of the Circuit Court of Appeals is reversed and the action is remanded to the District Court with direc-

tion to vacate its order for a hearing in equity and to proceed with the trial of the action at law." In the case at bar, the Court of Appeals was right in giving the same direction to the District Court (R. 84).

5. No question of general importance is answered wrongly by the Court of Appeals.

The solemnity of a drop of wax or of the mucilage under a red paper disc on an enforcible contract, no longer does arouse the high degree of interest in courts of justice, which it once did. Their energy can be expended more wisely than in reviving this interest. The Constitution does not compel the curtailment of trial by jury.

Respectfully submitted,

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